

# **EXHIBIT 5**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

- - - - -  
IN RE: PHARMACEUTICAL ) MDL NO. 1456  
INDUSTRY AVERAGE WHOLESALE ) CIVIL ACTION  
PRICE LITIGATION ) 01-CV-12257-PBS  
THIS DOCUMENT RELATES TO )  
U.S. ex rel. Ven-a-Care of ) Judge Patti B. Saris  
the Florida Keys, Inc. )  
v. ) Chief Magistrate  
Abbott Laboratories, Inc., ) Judge Marianne B.  
No. 06-CV-11337-PBS ) Bowler  
- - - - -

Videotaped deposition of MARK G. DUGGAN PH.D.

Volume III

Washington, D.C.

Friday, July 25, 2008

9:00 a.m.

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1 the most accurate picture to emerge. So to the extent  
2 that there -- so yeah.

3 Q. If you really wanted to be conservative in  
4 Abbott's favor, Dr. Duggan, would it not have been  
5 prudent to identify those states which have lower  
6 reimbursement amounts per claim and either exclude  
7 those from your difference calculation or seek to get  
8 the claims data for those states?

9 MS. THOMAS: Objection.

10 A. You know, once again, at a number of points  
11 in the analysis when I believed that there was a fork  
12 in the road, as I discussed earlier, I endeavored to  
13 be conservative. It is the issue of whether one of  
14 these 38 states -- I believe I -- my sense from  
15 examining the data is that any -- to the extent that  
16 there are any cases where I would overestimate I would  
17 much more often than not -- so it's not -- I'm not  
18 trying to be arbitrarily conservative. I'm trying to  
19 be conservative while getting the most accurate number  
20 possible. And so at some level the most conservative  
21 thing would be to consider no Medicaid claims for any  
22 states or Medicare claims.

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1 Q. That's what I would like you to do. I'm  
2 teasing. Go ahead.

3 A. So I applied the absolute -- I really did  
4 use all my training to try to produce for the court  
5 and others with an interest in this case an estimate  
6 that I think -- a result that I think will stand the  
7 test of time and that it is accurate. And in doing  
8 that when the data wasn't perfect I tried to penalize  
9 things in Abbott's favor.

10 Q. Now, the suggestion that I made about  
11 locating those states that have the lower  
12 reimbursement amounts per claim --

13 A. Right.

14 Q. -- excluding them from your analysis,  
15 getting the claims data, that's not something that's  
16 being arbitrarily conservative, is it, that  
17 suggestion?

18 A. I think the algorithm that I've used is an  
19 appropriate one and a conservative one. To the extent  
20 that there is -- I believe that if I were to take a  
21 symmetric approach to these 38 states and suppose had  
22 perfect data for every one of them, that, as I said,

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1 the numbers would be higher. That would be a  
2 conservative -- it might -- I'm not even sure that it  
3 would serve to reduce the value of difference. But I  
4 believe that exactly what I did was appropriate for  
5 the question in hand.

6 Q. And my question was a narrower one. It's  
7 not judging your entire analysis whether it's fair or  
8 not.

9 A. Right.

10 Q. It's was my suggestion being arbitrarily  
11 conservative.

12 MR. LAVINE: Object to form.

13 MS. THOMAS: Objection.

14 A. I would need to -- I guess I would need to  
15 reflect on that issue a bit more.

16 Q. I'll ask you next time.

17 If you would go to Exhibit 1113. This is  
18 the except from the 1997 report.

19 A. Two pages, right?

20 Q. Yes. Does this show that for all drug  
21 payments for the year 1996 the State of Pennsylvania  
22 ranked fifth?

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1 MR. LAVINE: Object to form.

2 A. It does. I'm not sure if this is NDC-based  
3 only, but that's what it says.

4 Q. Pennsylvania, if you recall, was one of the  
5 states you had identified in your handwritten notes as  
6 one from which you would seek to get claims data; is  
7 that right?

8 MS. THOMAS: Objection to form.

9 MR. LAVINE: Object to form.

10 A. In my -- I believe those notes were from  
11 February of 2007. So very, very early on. And it is  
12 true that in those notes from February of '07 or March  
13 of '07 that Pennsylvania was listed.

14 (Exhibit Abbott 1117 was  
15 marked for identification.)

16 BY MR. TORBORG:

17 Q. Okay. What I've marked as Exhibit 1117  
18 bears the Bates number EXP USABT-DUG --

19 A. Yeah, 3190.

20 Q. -- 3190. This appears to me to be some  
21 e-mail correspondence between representatives of the  
22 State of Pennsylvania and individuals with Steck

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<p>1 Consulting that deals with the topic of getting claims 2 data from the State of Pennsylvania.</p> <p>3 Do you recall, Professor Duggan, anything 4 about Steck Consulting or the government's attempt to 5 get claims data from the State of Pennsylvania?</p> <p>6 MR. LAVINE: Object to form.</p> <p>7 A. I recall that they were a state that was 8 contacted fairly early on. So this is consistent with 9 my recollection that they were contacted pretty early 10 on. I don't recall the details. I don't think I'm 11 cc'd on this. I don't recall the details of this 12 discussion here.</p> <p>13 Q. If you go to Abbott Exhibit 1115, which is 14 the e-mail correspondence that has the chart of claims 15 data that we looked at earlier, does it appear as 16 though some claims data for NDC claims was produced by 17 the State of Pennsylvania, starting with the year 18 1998?</p> <p>19 MR. LAVINE: Object to form.</p> <p>20 A. I'm sorry. Where are we?</p> <p>21 Q. Abbott Exhibit 1115, Bates page ending 479.</p> <p>22 A. 479?</p>	<p>1 But for Wisconsin the data went back all the way to 2 1993.</p> <p>3 And so it is -- my sense is that for the 4 same sort of diminishing returns reason one has to 5 draw the line somewhere. If one works from the bottom 6 of the table up, Washington D.C., Vermont, Alaska, 7 those aren't on the sort of cusp. I drew the line 8 where I felt was appropriate given the data that was 9 available and those other issues.</p> <p>10 THE WITNESS: I don't know when we're going 11 to do lunch.</p> <p>12 MS. BROOKER: Are you okay keeping going?</p> <p>13 MR. TORBORG: I'm about done with this 14 line.</p> <p>15 MS. BROOKER: Just tell Dave when you think 16 you need to break.</p> <p>17 MR. TORBORG: I probably have about five 18 minutes.</p> <p>19 BY MR. TORBORG:</p> <p>20 Q. You did utilize -- or included in your 11 21 states are states that had less claims data than 22 Pennsylvania, though, am I right?</p>
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<p>1 Q. Yes.</p> <p>2 A. Yes, I see that. So your question again 3 was -- I see the Pennsylvania on there. I don't 4 remember exactly what your question was.</p> <p>5 Q. Does it appear to you as though Steck 6 Consulting received claims data from the State of 7 Pennsylvania?</p> <p>8 MR. LAVINE: Object to form.</p> <p>9 A. It does appear that way, yes, from this.</p> <p>10 Q. And you do not have a separate -- I'll 11 state it another way. Pennsylvania is not one of the 12 11 states, correct?</p> <p>13 A. That's correct.</p> <p>14 Q. Do you know why not?</p> <p>15 A. As I said earlier, I considered at least 16 two factors -- well, I guess at least three factors -- 17 when determining whether to add, let's say, a state. 18 One was did we have data from it. Two was is it large 19 amount of Medicaid spending. And three, how much 20 coverage do we have for the state. And so here we can 21 see Pennsylvania has -- of the 11 states I considered, 22 Pennsylvania's spending is higher only than Wisconsin.</p>	<p>1 A. Only Wisconsin. Well, actually, Wisconsin 2 has more claims.</p> <p>3 Q. Years of claims data.</p> <p>4 A. Correct. So it would a sort of two pronged 5 decision.</p> <p>6 Q. Like for the state of Michigan you had 7 claims data only starting in the fourth quarter of 8 2000, right?</p> <p>9 A. I don't recall. That sounds right.</p> <p>10 Q. Missouri you had claims data starting in 11 the first quarter of 1998, right?</p> <p>12 A. That's correct. That's what I recall. So 13 inevitably when one draws the line there's going to be 14 a state that's close to the line and, you know, on 15 either side. And Pennsylvania was a state -- 16 Washington D.C. wasn't close to the line. 17 Pennsylvania was. But I drew the line where I felt it 18 was appropriate.</p> <p>19 Q. Who made the decision on where to draw the 20 line? Was that you or Steck Consulting or was there a 21 discussion about that?</p> <p>22 MR. LAVINE: Object to form.</p>

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